

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In Re:

COOL, COOL, WATER LLC,

Debtor.

COOL, COOL, WATER LLC,

Plaintiff,

v.

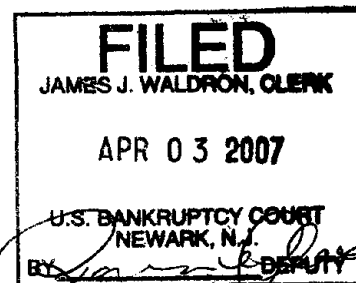
BLACKSTONE CAPITAL PARTNERS, LP,

Defendants.

Case No.: 05-24666 (DHS)

Adv. No.: 05-02318 (DHS)

Judge: Donald H. Steckroth, U.S.B.J.



ORDER

The relief set forth on the following pages, numbered two (2) through three (3), is hereby
ORDERED.

April 3, 2007

D. Steckroth
USBJ

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Caption of Order: **Order**

This matter having been opened to the court upon motion for summary judgment of Palomar Mountain Spring Water, Inc. (hereinafter "Palomar"), as attorney-in-fact for Donald V. Biase, the Chapter 7 Trustee (hereinafter "Trustee") for Cool, Cool, Water LLC (hereinafter "CCW" or "Debtor"), and cross-motion for summary judgment by Defendant Blackstone Capital Partners, LP (hereinafter "Blackstone"), and the Court having reviewed the pleadings and opposition to the motions filed in this matter and having heard the arguments of counsel, and for the reasons set forth in the Court's Opinion of April 3, 2007, and for good cause shown, it is

ORDERED that Palomar's motion for summary judgment is granted in part and denied in part, and Blackstone's cross-motion for summary judgment is granted in part and denied in part, as follows:

- (i) the Commercial Lease Agreement is a secured transaction governed by Article 9 of the California Uniform Commercial Code;
- (ii) the water bottling equipment became the property of CCW and S&P Water upon execution of the Commercial Lease Agreement, subject to the security interest of Blackstone;
- (iii) Blackstone is entitled to enforce its security interest pursuant to the remedies provisions in Article 9 of the California Uniform Commercial Code and the Commercial Lease Agreement, subject to any legitimate defense raised by CCW as to the enforceability of a specific remedy;

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- (iv) Blackstone's recovery of future rent discounted at 6% is proper under the Commercial Lease Agreement;
- (v) Blackstone may not recover the cost of replacement insurance;
- (vi) the Commercial Lease Agreement provision on attorneys' fees and costs is reciprocal; and
- (vii) the balance of the issues raised in Palomar's motion for summary judgment and Blackstone's cross-motion for summary judgment are denied because of the existence of genuine issues of material fact.